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Poledna v. Idaho Dept. of Labor Appellant's Brief Dckt. 42220

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IN THE SUPREME COURT OF THE STATE OF IDAHO

GINA A. POLEDNA,

Claimant/Appellant,

Supreme Court No. 42220

v.

THORNE RESEARCH, INC.

Employer/Respondent,

and

IDAHO DEPARTMENT OF LABOR,

Respondent.

APPELLANT'S BRIEF

Appeal from the District Court of the Industrial Commission of the State of Idaho

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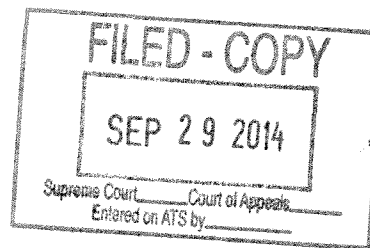


TABLE OF CONTENTS

Table of Cases and Authorities	3
Statement of the Case	4
Background/Facts	4
Standard of Review	5
Issues	
Decision Not Based on Substantial Competent Evidence	7
Decision Fails to Consider “Good Cause” under IDAPA	10
Findings of Fact Not Based in Law	13
Summation of Analysis	15
Conclusion - Relief Sought	16
Request for Costs	16
Certificate of Service	17

TABLE OF CASES AND AUTHORITIES

Idaho Statutes and IDAPA

Idaho Code 72-732	5
Idaho Code 72-1368(7)	4
IDAPA 09.01.30.450	10, 12, 15

Cases

<u>Edwards v. Independence Serv., Inc.</u> , 140 Idaho 912, 915	11
<u>Higgins v. Larry Miller Subaru Mitsubishi</u> , 145 Idaho 1, 4-5	13

STATEMENT OF THE CASE

Gina A. Poledna (Poledna), Claimant/Appellant, applied for unemployment insurance benefits, which were denied by the Idaho Department of Labor (IDOL). The IDOL Appeals Examiner denied a subsequent Appeal, finding that "Claimant voluntarily quit a job without good cause connected with employment" and that the "Employer's account is not chargeable for experience rating purposes."

The claim was appealed to the Idaho Industrial Commission, which denied the appeal on May 19, 2014, making the *Decision and Order* a final Order under Idaho Code 72-1368(7).

The Appellant now seeks relief from the Court.

BACKGROUND/FACTS

Poledna was a long time employee of Thorne Research, Inc., (Thorne), starting employment with Thorne as a production worker in May 2002.¹

Beginning in 2007, Poledna began experiencing wrist pain, which she felt was caused by work related activity at Thorne. Poledna sought medical treatment from Dr. Di Benedetto at that time. Eventually, the wrist problem resolved to the point she returned to work with a wrist brace.²

By November of 2013, Poledna was experiencing severe bilateral pain in her wrists, and she again sought medical treatment. She received a diagnosis of bilateral carpal tunnel syndrome. Her orthopedist, Dr. Di Benedetto, stated in his treatment

¹ Agency Record, page 2

² Agency Record, page 2

notes that work made her pain worse, and caused her harm.

After learning of the diagnosis, and realizing that continuing work in her present capacity would aggravate her wrist condition, Poledna sought accommodation from Thorne which would allow her to work with the manipulative restrictions presented by her medical condition. The request for accommodation was denied, and Thorne told Poledna they did not have any other work available. Poledna left employment with Thorne after they refused accommodation, and thereafter she filed for unemployment benefits, which were denied.³

STANDARD OF REVIEW

The Court has limited jurisdiction in this matter as set out in Idaho Code 72-732 and 72-733, et al. Pursuant to Idaho Code 72-732, the Court may only affirm or set aside the *Decision and Order* upon the following grounds:

- (1) The Commission's findings of fact are not based on substantial competent evidence;
- (2) The commission has acted without jurisdiction or in excess of its powers;
- (3) The findings of fact, order or award were procured by fraud;
- (4) The findings of fact do not as a matter of law support the order or award.

ISSUES ON APPEAL

- (1.) The Commission's *Decision and Order* issued in this matter is not based on substantial competent evidence, as the Order is void of a description of the job performed by Poledna, does not set forth or consider the physical requirements

³Transcript pages 6-8, 11-13

necessary to perform Poledna's job, does not identify, discuss, or consider the manipulative requirements necessary to perform Poledna's job, does not consider how Poledna's work hours would effect her ability to perform the unidentified job, nor does it consider or discuss all of these facts in combination to determine if Poledna had "good cause" for leaving employment.

- (2.) The Commission's *Decision and Order* failed to recognize that Poledna had Statutory "good cause" under IDAPA Rule 09.01.30.450, for leaving her employment.
- (3.) The findings of fact are not supported as a matter of law as the *Decision and Order* found that the "Claimant voluntarily quit a job without good cause connected with employment."

**THE COMMISSION'S DECISION AND ORDER ISSUED IN THIS MATTER IS NOT
BASED ON SUBSTANTIAL COMPETENT EVIDENCE.**

The IDOL Appeals Examiner denied the Appeal finding that "Claimant voluntarily quit a job without good cause connected with employment" and that the "Employer's account is not chargeable for experience rating purposes."⁴

The Examiner/Commission determined that Poledna "voluntarily quit a job without good cause connected to employment"⁵ without ever knowing what job Poledna performed, the physical requirements necessary to perform this job, and what is most important, the manipulative requirements necessary to perform the job.

With all due respect to both the Examiner and the Commission, the *Decision and Order* are fundamentally defective, as they fail to identify, discuss or consider:

- (1.) The job performed by Poledna,
- (2.) The physical requirement necessary to perform Poledna's job,
- (3.), The manipulative requirements necessary to perform Poledna's job.

Lacking this basic knowledge, how could the Examiner/Commission determine Poledna quit without "good cause?"

The Commission had Poledna's medical records. How could any reasonable person then determine someone could perform a job without some basic job description and some basic understanding of the physical requirements needed to preform the job?

The Commission determined that the "Claimant worked in the bottling and labeling departments over the span of her career. Her duties included setting up

⁴ Agency Record page 1

⁵ Agency Record page 26

machines, cleaning, putting labels on products and boxing them. She worked between 36 and 44 hours per week.”⁶ This statement is the only description of the job Poledna performed at Thorne.

There is clear unmistakable error on the face of the *Decision and Order*, as the Decision is completely silent and void of any discussion of what job Poledna performed at Thorne. It is impossible to determine that Poledna could do her job, without knowing what her job was, or to determine that she had quit without “good cause.”

It is impossible to determine someone can perform a job without knowing the physical requirements necessary to perform it. A job description with some information about physical demands is the starting point for any analysis of whether someone has the physical capacities to perform a job. Without some basic understanding of what the job is to be performed, the Commission is making a determination with no basis in fact. It is guessing Poledna could do the job.

How much weight did Poledna lift? Was there overhead reaching? Was Poledna twisting or bending her wrists? If so, how often, what percentage of the day? Did her job require fine finger dexterity? Was Poledna performing production work, and if so was there an expected rate of production?

Because the Commission knew Poledna has documented manipulative restrictions, understanding and discussing the manipulative requirements of the job Poledna performed is critical to the analysis of whether she could perform the job. Again, no information was obtained and no discussion was made in the Decision and

⁶ Agency Record page 21

Order as to what manipulative requirements were necessary to perform the job. This means that the Commission had no basis in fact when it determined that Poledna “quit” without good cause. This means that the Examiner and the Commission had to guess or assume what Poledna was doing at Thorne.

Obtaining a job description was critical to the analysis of whether Poledna could perform her job when contrasted against what her doctor said, and what Poledna testified to. A basic job description is the standard by which all other evidence was to be compared and judged, especially the medical evidence and testimony of Poledna. The failure to obtain and discuss Poledna’s job description meant no other reasonable analysis could be made of the other evidence of record. It is a fatal flaw in the *Decision and Order*, which leaves everything else up to speculation.

Finally, the testimony of record, which is not disputed, is that Poledna was working at Thorne three (3) 12 hour days, then an 8-hour day, with some overtime.⁷

Poledna’s work schedule was also a factor which needed to be considered and contrasted against the physical requirements of her job as she was working 12 hour days. This schedule required Poledna to perform an additional four hours of work (when compared to a normal work day) and limited her “down time” (time off from work) between work days. In other words, she had significantly less time between the end of her shift and the start of the next shift during the three 12 hour day periods. This would allow for substantially less physical recovery time between shifts. While the schedule is of record, it is not considered or discussed in the *Decision and Order*. It is, in and of

⁷ Agency Record page 21, Transcript page 12-13

itself, a significant factor in considering whether Poledna had “good cause” for quitting.

**THE DECISION AND ORDER FAILED TO CONSIDER THAT POLEDNA HAD
STATUTORY “GOOD CAUSE” UNDER IDAPA RULE 09.01.30.450 FOR QUITTING
HER EMPLOYMENT.**

It is undisputed that Poledna has manipulative restrictions, as evidenced by the medical records contained in the record, and as discussed by the Commission. The Commission did not dispute the severity of the limitations, nor did they dispute any of Poledna’s allegations concerning her manipulative limitations. It is also undisputed that Poledna approached Thorne about accommodating her manipulative limitations, which they refused to do. There is no evidence to the contrary.

Poledna testified that she sought accommodation from Thorne, but they told her that there was “no light duty positions available.”⁸

Even the Examiner seems to accept Poledna’s testimony, stating “Okay. So, there isn’t another job for - - that they had for you to do at Thorne Research, but my question still is why not go find another job with another employer while you still continue to work?”⁹ But the answer is clear, she had no work to return to at Thorne. Thorne knew Poledna had manipulative limitations which prevented her from continuing performance of her existing job. When Thorne refused to accommodate her medical condition, and refused to place her into other work, they effected a constructive firing. Thorne knew Poledna was unable to continue, and when they refused to accommodate, they knew she could not continue at her present job. Thorne created an

⁸ Transcript page 12-13

⁹ Transcript page 12

impossible employment situation for Poledna, and had to know this when it refused accommodation. Thorne got rid of Polenda by refusing accommodation.

The Commission in the *Decision and Order* cites Edwards v. Independence Serv., Inc., 140 Idaho 912, 915, 104 P.3d 954, 957 (2004) stating “If a claimant voluntarily quits, the claimant bears the burden of proving, by preponderance of the evidence, that s/he quit for “good cause.” The Commission then cites Edwards stating “A preponderance of the evidence is evidence that, when weighed with that opposed to it, has more convincing force and from which a greater probability of truth results.” Id. At 916, 104 P3d at 958.

In this matter, there is no opposing evidence to suggest that anything other than what Poledna testified to had occurred. Poledna presented with a medical condition and sought accommodation or a change in duties which Thorne refused. By virtue of Thorne's refusal to accommodate or change her position, they knew Poledna had no choice but to leave employment.

And what if Poledna had stayed, as suggested by the Examiner? Staying was not only physically impossible, but presented Poledna with the very real possibility that she would be terminated for cause (poor work performance) if she remained at Thorne. Being terminated “for cause” could restrict or limit unemployment benefits.¹⁰ If Poledna stayed at Thorne, as suggested by the examiner, she faced the very real possibility of being disqualified for unemployment benefits, if she were to be fired for cause.

Poledna needs only show this Court that she had “good cause” for quitting

¹⁰ Generally, if an employee is terminated for misconduct, they can be denied unemployment benefits.

employment with Thorne.

The Idaho Administrative Code, under section 09.01.30.450 defines "good cause" when an employee quits work. This section states in part:

01. Burden of Proof

The claimant has the burden of proof to establish that he voluntarily left his employment with good cause in connection with the employment to be eligible for benefits. (3-19-99)

02. Cause Connected with Employment

To be connected with employment, a claimant's reason(s) for leaving the employment must arise from the working conditions, job tasks, or employment agreement. If the claimant's reason(s) for leaving the employment arise from personal/non job-related matters, the reasons are not connected with the claimant's employment. (3-19-99)

03. Good Cause

The standard of what constitutes good cause is the standard of reasonableness as applied to the average man or woman. Whether good cause is present depends upon whether a reasonable person would consider the circumstances resulting in the claimant's unemployment to be real, substantial, and compelling.

05. Quit Due to Health or Physical Condition

A claimant whose unemployment is due to his health or physical condition which makes it impossible for him to continue to perform the duties of the job shall be deemed to have quit work with good cause connected with employment.

In this case, Poledna had a documented medical condition, which the employer refused to accommodate. Thorne also refused to move her or change her job duties. Poledna could not continue performing the job at Thorne due to her manipulative restrictions. She either had to continue performing this job, or quit. She had no other choice. Thorne was well aware that she had prior wrist issues and a prior worker compensation claim. The Commission was aware of this too. Poledna did the right thing seeking accommodation or a position change. When Thorne refused, she had no choice but to quit. Poledna had "good cause" as set out in IDAPA 09.01.30.450.05.

Poledna did not have a viable option available, having been refused

accommodation by Thorne.¹¹ Poledna explored her options with Thorne and had none. Poledna therefore had “good cause” for leaving employment.

**THE FINDINGS OF FACT ARE NOT SUPPORTED AS A MATTER OF LAW AS THE
DECISION AND ORDER FOUND THAT THE “CLAIMANT VOLUNTARILY QUIT A
JOB WITHOUT GOOD CAUSE CONNECTED WITH EMPLOYMENT.”**

The Commission determined in the *Decision and Order* that “The only medical evidence in the record was provided by the claimant’s own doctor, who did not recommend that the claimant take time off from work; did not recommend that the claimant change occupations; and did not recommend that the claimant discontinue working.”¹²

The Commission does not dispute that Poledna has bilateral carpal tunnel syndrome.

The Commission had in its possession the notes of Dr. Di Benedetto, an orthopedic surgeon, dated December 13, 2013, which states “We discussed options including carpal tunnel release, continuing with her symptomatology and living with the pain, or trying a change in activities. I explained to her I do think that because she feels her pain is made worse while at work, then she clearly is having pain related to work. I explained I am dubious that her insurance carrier at work is likely to find this to be completely associated with work as the only cause. Her question was pretty straight forward, which was: Does work cause her pain to get worse and does it cause her

¹¹ Higgins v. Larry Miller Subaru Mitsubishi, 145 Idaho 1, 4-5, 175 P.3d 163, 166-167 (2007), requires the employee explore other options than quitting.

¹² Agency Record page 10

harm? **I believe the answer is yes.** She will consider her options. She will contact me if she has any further questions.” (Emphasis added).

The evidence of record is that orthopedist Dr. Di Benedetto opined that Poledna has bilateral carpal tunnel syndrome, that it causes Poledna pain, that it is made worse by work activities, and that it causes her harm. Further, Dr. Di Benedetto is clearly leaving the decision of what to do up to Poledna as stated in his notes of December 13, 2013.

Poledna presented evidence of a documented medical condition, which her orthopedist felt was made worse by work and which “caused her harm.” She sought accommodation with her employer which was refused. She sought a job change which was refused by Thorne. Poledna’s orthopedist clearly left the decision up to Poledna. Faced with continuing in a job that made her hurt and “caused her harm,” Poledna took the only option left for her, which was to leave employment.

The Decision and Order are not supported by law as Poledna demonstrated that she could no longer continue at Thorne in her present job. A claimant whose unemployment is due to his health or physical condition which makes it impossible for him to continue to perform the duties of the job shall be deemed to have quit work with good cause connected with employment.

If the Commission argues that she could work, how can they make this argument, with no job description or analysis of what physical requirements, especially manipulative, were expected of Poledna? How can the Commission say Poledna could do her job when they don’t even know or analyze what that her job was? And obviously, there could be no rational analysis of the facts absent some understanding of what

Poledna did at Thorne. The *Decision and Order* are therefore not supported in the law as Poledna had “good cause” for leaving employment. The Commission cannot argue otherwise as they have no basis in fact for their finds as they don’t even know what Poledna did at Thorne. Therefore, the entire *Decision and Order* is not based in law.

SUMMATION OF ANALYSIS

The Commission found that Poledna did not have “good cause” for leaving her employment. Yet the Commission did not have Poledna’s job description, nor any information about the physical or manipulative requirements necessary to perform her job. Some understanding of what was physically required of Poledna was absolutely necessary to determine if she had “good cause” for leaving employment. Some information about the physical and manipulative requirements were absolutely necessary as the description of the requirements are what all other information (medical documentation and testimony) are judged against. What substantial competent evidence did the Commission possess when it didn’t know what Poledna was actually doing at Thorne? What foundation does the Commission have in any of its arguments without some understanding of the job? How can the findings be based on critical analysis when there is no foundational description of the work with which to reason with?

Absent some understanding of what Poledna was doing at Thorne, the Commission is guessing, and therefore the *Decision and Order* cannot be based on substantial competent evidence as required by law.

Poledna had “good cause” for leaving employment, as required under IDAPA Rule 09.01.30.450.

The record supports that Poledna had a documented medical condition. The records also supports that she sought accommodation from Thorne, or a job change, both of which were refused by Thorne. Poledna was experiencing pain and the work was causing her harm, based on the opinion of her orthopedist, in her current position. Poledna sought and explored her options, which were to continue working in pain, which caused her harm, or to quit. No other option existed. Poledna therefore had "good cause under the IDAPA for leaving employment.

Finally, the *Decision and Order* cannot be based in law, when Poledna had "good cause" for quitting, as set out under the IDAPA. Further, with no understanding of what Poledna was doing in her employment, as more fully set out in the first issue, the Decision and Order cannot be based in law.

The Decision and Order could not be based in law when a critical piece of information was missing.

CONCLUSION - RELIEF SOUGHT

We would respectfully ask the Court to reverse the Decision and Order entered in this matter and to award Unemployment Benefits to Poledna, subject her qualification. In the alternative, we would ask the Court to remand the matter for further processing.

REQUEST FOR COSTS AND ATTORNEY FEES

Counsel would ask for an award of any costs and attorney fees that may be awarded under Idaho Law, for the reasons set forth in this brief.

Dated this 26 day of September 2014.

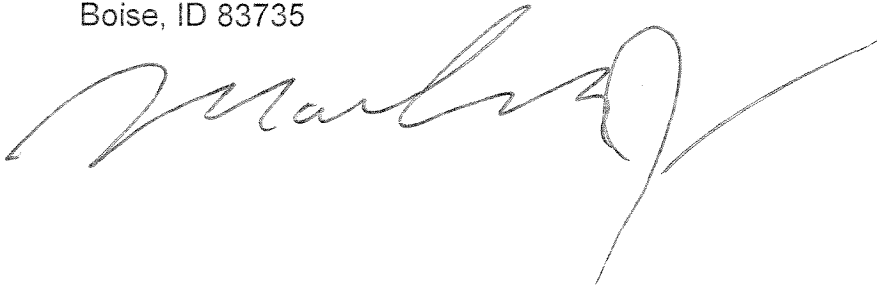

Mark B. Jones
Attorney for Claimant/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September 2014, I served two (2) true and correct copies of the foregoing via U.S. Mail, postage prepaid, to:

Thorne Research, Inc
P.O. Box 25
Dover, ID 83825-0025

Tracey K. Rolfsen
Idaho Department of Labor
317 W. Main Street
Boise, ID 83735

A handwritten signature in black ink, appearing to read 'Tracey K. Rolfsen', with a long horizontal stroke extending to the right.